

LECG

Urgent Legal Matter
Reply Requested by May 15, 2006

May 3, 2006

By Overnight Courier

Kevin Feeney
Vice President and General Counsel
Air Liquide America Corporation
2700 Post Oak Boulevard
Suite 1800
Houston, TX 77056

Re: Invitation to Participate and Cooperate in the Portland Harbor
Superfund Site Remedial Investigation and Feasibility Study

Dear Mr. Feeney:

As you may know, by letter dated April 28, 2006, the U.S. Environmental Protection Agency provided notification to Air Liquide America Corporation ("Air Liquide") that it is potentially liable for response costs incurred at the Portland Harbor Superfund Site in Portland, Oregon (the "Site"). EPA's notice letter requests that Air Liquide become a cooperating party with respect to EPA's enforcement actions at the Site, and, more specifically, that Air Liquide participate in an EPA-ordered remedial investigation and feasibility study ("RI/FS") being performed by members of the Lower Willamette Group ("LWG").

To that end, I am writing on behalf of the LWG members to invite you and/or other representatives for Air Liquide to attend an informational meeting with the LWG on May 24, 2006 in Portland, Oregon, that will explain how Air Liquide can become a cooperating party and participate in completing the RI/FS. EPA representatives plan to attend at least a portion of this meeting, as do representatives for the Oregon Department of Environmental Quality ("DEQ").¹

¹ The LWG members understand that DEQ intends to soon issue notices of a related settlement opportunity, pursuant to State Law (ORS 465.200 *et seq.*), to some or all LWG members and recipients of EPA's notice letter for certain costs incurred by the State at the Site. Should DEQ issue such correspondence prior to the date of the referenced meeting, the LWG intends to coordinate with DEQ and the Oregon Department of Justice so that the subject of DEQ's letter may be added to the meeting agenda, as appropriate.

This letter provides background information for your consideration in advance of the May 24 meeting, describes the purpose of that meeting and requests that you notify the undersigned on or before May 15, 2006 to confirm Air Liquide attendance.

LWG Background

The LWG is a coalition of fourteen (14) public and private entities listed in Table 1 who received EPA's original notice of potential liability for the Site in December 2000. As noted in Table 1, ten (10) of the LWG members are parties to an Administrative Settlement Agreement and Order on Consent with EPA, Docket No. CERCLA 10-2001-0240 ("Settlement Agreement"). The Settlement Agreement provides for, among other things, the performance of an RI/FS for the "Portland Harbor Area." To date, RI/FS work has focused on the "Study Area" -- an approximate nine-mile reach of the Lower Willamette River. As also noted in Table 1, four (4) of the LWG members are not parties to the Settlement Agreement, but are nonetheless funding the RI/FS (and thus cooperating with EPA and DEQ) pursuant to the LWG's Portland Harbor Common Interests and Joint Defense Agreement ("LWG Agreement").

As designated in Table 1, the ten (10) LWG members who signed the Settlement Agreement are referred to as "Voting Members," recognizing the voting powers granted to these members on matters related to the performance of the RI/FS, which they are obligated by the Settlement Agreement to complete, and other activities authorized and funded by the LWG Agreement. The four (4) LWG members who did not sign the Settlement Agreement, but who are participating in and funding the RI/FS, are referred to as "Funding Members." As will be discussed at the meeting on May 24, the LWG invites Air Liquide to become a cooperating party and participate in the RI/FS under either form of LWG membership (*i.e.*, by becoming either a "Voting" or "Funding" Member).

The primary advantage to becoming a cooperating party for the completion of the RI/FS is the opportunity to participate directly in the development of cleanup alternatives for which Air Liquide may have potential liability. Those parties that choose not to become cooperating parties may be considered to be recalcitrant by EPA, DEQ and/or the LWG. As you may know, the "degree of cooperation" (or recalcitrance) exercised by parties in responding to government agency determinations and requests is commonly considered by the courts when allocating environmental investigation and cleanup costs.

The LWG Agreement also provides for an interim allocation of RI/FS and group administration costs. This interim allocation is subject to revision and reallocation at the time the group adopts a final allocation of responsibility. As will be explained at the meeting on May 24, the LWG wishes to extend an invitation for Air Liquide to fully participate in all aspects of the design, implementation and cost of that allocation process. Participation in the allocation

process provides another opportunity for Air Liquide to influence the share of cleanup costs at the Site for which it will be potentially liable (not to mention the opportunity for reduced risks and transaction costs when participating in a nonjudicial allocation process as opposed to litigation).

In addition, as will also be discussed at the meeting, the LWG has formulated a set of options to provide for the interim reimbursement of past response costs incurred under the Settlement Agreement and LWG Agreement (*i.e.*, costs incurred since for formation of the LWG in 2001). Please be advised that these past costs exceed \$30 million.

The LWG Agreement is a confidential document, but is available for review subject to the terms of the attached simple form Confidentiality Agreement. Should you wish to receive a copy of the LWG Agreement for review in advance of the May 24 meeting, please contact the undersigned or one of the LWG representatives identified later in this letter. The LWG Agreement will be sent to you immediately upon your execution and delivery of the attached Confidentiality Agreement.

LECG's Role and Prior Work

The LWG has engaged LECG, LLC as a third-party neutral to perform consulting activities that are preparatory to the design and implementation of a nonjudicial allocation of responsibility for the Site. To support a limited component of this effort, EPA Headquarters has partially funded a portion of LECG's work as it relates to the convening of new members to the LWG who, along with the current members, will complete the RI/FS and may wish to engage in an alternative dispute resolution (ADR) process, *i.e.*, nonjudicial allocation, for resolving claims concerning the Site.

As will be explained in more detail at the May 24 meeting, the work performed by LECG to date has included the following:

- Preparation of a database of current and former owners and operators of waterfront and upland properties within the drainage basin for the Site (including both LWG members and nonmembers);
- Research and collection of publicly available documents concerning upland properties within the drainage basin and the identification of potentially responsible parties (PRPs) for the Site;
- Work to establish a pathway to resolve the alleged liability of certain federal and state entities; and

- Efforts to expand the LWG's membership, including the formulation of the LWG's invitation for Air Liquide to participate in and cooperate with the RI/FS as well as EPA, DEQ and the LWG members.

It should be noted that the steps required to design a nonjudicial allocation procedure for the Site and the selection of a neutral party to assist the allocation process, if any, have not occurred and will not occur until, at the earliest, after the LWG has exhausted all reasonable efforts to join as many new members to the group as possible. Accordingly, the future role of LECG in this matter, if any, is undefined and will be shaped by the membership of the LWG in the future.

Invitation to Meet and Confer on May 24, 2006

The LWG members invite you to attend a meeting on May 24, 2006 beginning at 10:00 a.m. PDT at the following location:

Portland Marriott Downtown Waterfront
1401 SW Naito Parkway (Between Columbia and Clay on Naito)
Portland, Oregon 97201
(503) 226-7600

The agenda for the meeting is anticipated to consist of the following:

- Overview of the Site and RI/FS activities performed to date.
- Summary of work performed by LECG.
- Discussion by EPA and DEQ concerning federal and state enforcement and regulatory issues.
- Confidential presentation of participation terms to be offered to all recipients of EPA's notice letters (as well as DEQ's notice of settlement opportunity, if issued).
- Discussion of the LWG's future activities, including completion of the RI/FS, continued expansion of the group and design and implementation of a cost allocation and settlement process for the Site.

RSVP Instructions and Points of Contact for Additional Information

Using the information provided below, please contact the undersigned to confirm your plans to attend the May 24 introductory meeting on or before May 15, 2006, and provide the names of the individuals who will attend and the organization(s) they represent.

William J. Hengemihle
LECG, LLC
1255 Drummers Lane, Suite 320
Wayne, Pennsylvania 19087
(610) 254-4040 (Telephone)
(610) 254-1188 (Facsimile)
Email: bhengemihle@lecg.com

In addition, and as provided in EPA's notice letter, you are welcome to contact the LWG member representatives listed below to learn more about the LWG's past and ongoing activities and the invitation for Air Liquide to participate in those activities and thereby become a cooperating party, as requested by EPA.

David Ashton
Port of Portland
P.O. Box 3529
121 NW Everett
Portland, Oregon 97208
(503) 944-7090
david.ashton@portofportland.com

William F. Joyce
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, Washington 98101
(206) 957-5951
wjoyce@sizlaw.com

Finally, for your general information, a list of all parties who are receiving this invitation is provided in Table 2.

Thank for your time and consideration in this matter. I am looking forward to hearing from you soon, and seeing you and/or others for Air Liquide on May 24 in Portland.

Very truly yours,


William J. Hengemihle

cc: Stephanie K. Payne

Table 1

Lower Willamette Group Membership

(As of May 3, 2006)

Member	Type of Participation
1. Arkema, Inc. (formerly ATOFINA Chemicals, Inc.)	Voting (1)
2. Aventis CropSciences	Funding (2)
3. Chevron U.S.A., Inc.	Voting (1)
4. City of Portland	Voting (1)
5. ConocoPhillips Company (successor to Tosco Corporation)	Voting (1)
6. Gunderson LLC (formerly Gunderson, Inc.)	Voting (1)
7. Kinder Morgan, Inc.	Funding (2)
8. NW Natural	Voting (1)
9. Oregon Steel Mills, Inc.	Voting (1)
10. Port of Portland	Voting (1)
11. The Burlington Northern and Santa Fe Railway Company	Funding (2)
12. Time Oil Co.	Voting (1)
13. Union Pacific Railroad Company	Voting (1)
14. Siltronic Corporation (formerly Wacker Siltronic Corporation)	Funding (2)

- (1) Party has signed the EPA Settlement Agreement and LWG Agreement.
- (2) Party has not signed the EPA Settlement Agreement but has signed the LWG Agreement.

Table 2

LWG Meeting Invitation Recipients

Recipient
1. ACF Industries, LLC
2. Air Liquide America Corp.
3. Beazer East, Inc.
4. BP West Coast Products, LLC (Atlantic Richfield Co.)
5. Brix Maritime Towing Co.
6. Calbag Metals Company
7. CertainTeed Corp.
8. Christenson Oil
9. Crawford Street Corporation
10. ExxonMobil Refining & Supply Company
11. FMC Corporation
12. Foss Maritime Company
13. Front Avenue Corporation
14. Gould Electronics, Inc.
15. Hendren Tow-Boat Co., Inc.
16. Langley-St. Johns Partnership
17. Mar Com Holdings, LLC
18. McCall Oil and Chemical Corp.
19. NL Industries, Inc.
20. Northwest Pipe Company
21. Schnitzer Investment Corp.
22. Schnitzer Steel Industries, Inc.
23. Shaver Transportation Company
24. Shell Oil Company
25. Tube Forgings of America, Inc.
26. U.S. General Services Administration
27. U.S. Maritime Administration
28. U.S. Maritime Commission
29. U.S. Navy

Common Interests and Confidentiality Agreement for Review of LWG Agreement

The parties to this agreement are _____ ("Reviewer") and the Lower Willamette Group ("LWG"). The purpose of this Common Interests and Confidentiality Agreement (the "Agreement") is to enable Reviewer to receive a copy of the Lower Willamette Group's Fifth Amended and Restated Common Interest and Joint Defense Agreement ("LWG Agreement") for the sole purpose of Reviewer's good faith consideration of whether to participate in the LWG. This Agreement is based on the Parties' common interests as persons who have been notified by EPA of potential liability for the Portland Harbor Superfund Site.

Reviewer and its authorized representatives and agents agree to hold the LWG Agreement and its contents in strict confidence and will not disclose the LWG Agreement or its contents to third parties, other than Reviewer's legal counsel and its insurance carriers. To the extent such permitted disclosure is made by Reviewer, Reviewer will take all necessary and appropriate measures to ensure that such legal counsel or insurance carriers are familiar with and agree to be bound by the terms of this Confidentiality Agreement, and will be legally responsible for ensuring that such counsel and carriers act in compliance with this Agreement.

Unless otherwise agreed to in writing by the LWG or its authorized representative(s), Reviewer agrees to return all electronic and physical copies of the LWG Agreement received or produced by Reviewer, or to provide a certified statement that all such copies have been destroyed, (a) upon a determination by Reviewer that it declines to join the Lower Willamette Group, or (b) within 120 days of Reviewer's receipt of the LWG Agreement, whichever event occurs earlier.

Reviewer acknowledges and understands that the LWG Agreement was prepared as confidential attorney work product to provide for a joint and common defense in anticipation of litigation. Reviewer agrees that no claim of attorney-client, joint defense, or work product privilege or doctrine shall be deemed waived by reason of the review permitted under this Confidentiality Agreement. Reviewer also acknowledges and understands that the LWG Agreement reflects compromise negotiations, and, as such, is not admissible as evidence under Fed. R. Evid. 408 and Oregon Rule of Evidence 408.

The Parties agree that irreparable damage, including but not limited to, economic damages to the LWG, might occur in the event that _____ or their representatives breach any of the provisions of this agreement and that money damages may not be a sufficient remedy for breach of this agreement. Accordingly, _____ agree(s) that in addition to any and all

legal and equitable remedies other than injunctive relief, the LWG shall be entitled to an injunction to prevent breaches and to enforce specifically the terms and conditions of this agreement in any court of competent jurisdiction.

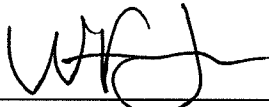
Upon Reviewer becoming an additional signatory to the LWG Agreement, this Agreement will be superseded by the confidentiality provisions of the LWG Agreement.

Signature of Authorized Representative
for Reviewer

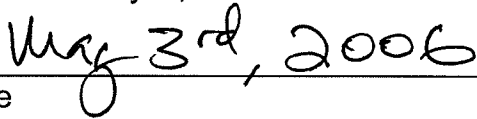
Printed Name of Authorized Representative

Title

Date



William F. Joyce, on behalf of the Lower Willamette Group



Date